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No. 95-1605

In the Supreme Court of the United States

OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

MIGUEL GONZALES, ORLENIS HERNANDEZ-DIAZ, AND MARIO PEREZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Section 924(c) of Title 18 requires mandatory terms of imprisonment for defendants who use or carry firearms during and in relation to certain narcotics or violent offenses, and it provides that "[n]otwithstanding any other provision of law" those prison terms "shall [not] run concurrently with any other terms of imprisonment." The question presented in this case is whether a court may order that a sentence imposed under Section 924(c) is to run concurrently with a state-law sentence that the defendant is already serving.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 65 F.3d 814.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1995. A petition for rehearing was denied on December 7, 1995. Pet. App. 21a-22a. On February 27, 1996, Justice Breyer extended the time for filing a petition for a writ of certiorari to and including April 5, 1996. The petition for a writ of certiorari was filed on April 4, 1996, and was granted by the Court on June 17, 1996. J.A. 159. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 924(c)(1) provides:

> Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun or semi-automatic assault weapon to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

STATEMENT

After a jury trial in the United States District Court for the District of New Mexico, respondents were convicted of conspiracy to possess and distribute marijuana, in violation of 21 U.S.C. 846; possession of marijuana with the intent to distribute it, in violation of 21 U.S.C. 841; and using or carrying a firearm during and in relation to a drug trafficking offense, in violation of 18 U.S.C. 924(c). Respondents received sentences ranging from 120 to 147 months' imprisonment, of which 60 months reflected the mandatory sentence required by 18 U.S.C. 924(c). The court of appeals reversed respondents' convictions for possessing marijuana and vacated their sentences. Pet. App. 1a-20a.

1. Undercover officers with the Albuquerque, New Mexico, Police Department, posing as drug dealers, arranged to sell 100 pounds of marijuana to respondents and their co-conspirator Luis Leon for $60,000. A 35-pound bale of marijuana, which was used as bait, was placed in the trunk of an undercover vehicle and shown to respondents Gonzales and Hernandez-Diaz and to Luis Leon. Pet. App. 2a.

On the day of the sale, Leon and respondent Gonzales met with undercover officers in a parking lot adjoining Leon's apartment, where they once again viewed the bait marijuana. Leon then took one of the officers into his apartment, ostensibly to consummate the sale. Once in the apartment, however, the officer was held up at gun point by respondent Hernandez-Diaz, who apparently intended to take the marijuana without paying for it. Respondent Perez, who was also in the apartment, helped Hernandez-Diaz by patting the officer down and taking his weapon. After

the officer was disarmed, he was bound and gagged. Pet. App. 2a-4a.

Respondent Gonzales had remained in the parking lot with a second undercover officer. While the first officer was being held up in the apartment, Gonzales pulled a gun on the second officer, took the officer's firearm, and ordered him to accompany Gonzales into the apartment. At that time, a siren sounded. Gonzales fled the area. Several officers ran up the stairs to Leon's apartment, kicked the door open, and rescued the first undercover officer. Pet. App. 4a-5a.

2. Respondents were convicted in state court on charges arising out of the hold up of the two undercover officers. See Gov't Pet. for Reh'g 2.[1] While they were serving those sentences, respondents and Leon were convicted in federal court of narcotics conspiracy and substantive offenses (21 U.S.C. 846, 841) and of using a firearm during and in relation to a drug trafficking crime (18 U.S.C. 924(c)). Respondents received sentences ranging from 120 to 147 months' imprisonment, of which 60 months reflected the mandatory sentence required by 18 U.S.C. 924(c). The district court ordered so much of the new federal sentences as was attributable to the narcotics offenses to run concurrently with the state sentences. The court ordered, however, each 60-month sentence under 18 U.S.C. 924(c) to run consecutively to the state sentence that the defendant was serving. J.A. 115, 125, 134-135.

3. The court of appeals vacated the district court's order that the sentences under Section 924(c) be served consecutively to the state sentences.[2] The court held that a sentencing court may order the five-year prison term required by Section 924(c) to run concurrently with a state-law sentence that the defendant is already serving. The court acknowledged that Section 924(c) provides that the sentence imposed under that statute shall not run concurrently "with any other term of imprisonment." Pet. App. 12a. The court also acknowledged that "every circuit to have considered the issue has held that [Section] 924(c)'s plain language prohibits sentences imposed under that statute from running concurrently with state sentences." *Id.* at 10a. The court believed, however, that a different outcome was warranted by the canon that "courts will adopt a more sensible statutory construction" when "a literal reading of the statutory language would produce an absurd result." *Id.* at 11a.

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[1] Leon also was prosecuted by the State of New Mexico, but his trial ended in a mistrial on the most serious charges. He was convicted only of possession of a controlled substance. Although he was serving an 18-month sentence for that state offense at the time he was sentenced for the federal offenses, and although his sentence under 18 U.S.C. 924(c) was ordered to run consecutively to that state-law sentence, he did not appeal the consecutivity feature of his Section 924(c) sentence. Accordingly, Leon's sentence under Section 924(c) was not changed by the court of appeals' decision under review. See Pet. App. 9a-15a; see also L. Leon Presentence Investigation Report ¶ 30 (July 16, 1993).

[2] The court of appeals also reversed respondents' substantive drug convictions and vacated their sentences. Pet. App. 6a-9a, 20a. The court concluded that respondents could not properly be convicted of possessing the marijuana with the intent to distribute it, because the undercover officers never actually relinquished control over the drugs. *Id.* at 8a-9a. The court further set aside several enhancements imposed by the district court under the Sentencing Guidelines. *Id.* at 7a-9a, 18a-19a. We have not challenged those rulings here.

The court of appeals did not expressly identify the specific "absurd result" that would result from applying the statutory language faithfully, Pet. App. 11a-12a. It suggested, however, that the absurdity resulted from the fact that "an all-inclusive reading of 'any other term of imprisonment' * * * would more than double the custodial price that Congress and the Guidelines have set for committing the total criminal conduct engaged in by" respondents. *Id.* at 15a. As a result of that perceived anomaly, *ibid.*, the court focused on two aspects of Section 924(c) that it believed raised a doubt about whether Congress used the phrase "any other term of imprisonment" in its "most literal[]" sense. *Id.* at 12a. First, the court noted that Section 924(c) is a "federal statute, with presumed concern for the treatment of federal crimes." *Ibid.* Second, the court found it significant that Congress used "a roundabout locution" to "negate[] the imposition of a concurrent sentence, rather than to employ more conventional and straightforward declaratory language to require [a] consecutive sentence[]." *Id.* at 12a-13a.

Because the court believed that those two features of the statute created an ambiguity about what Congress intended, it examined the Senate Committee Report that accompanied the 1984 amendments to Section 924(c), which, *inter alia*, made changes to the provision forbidding a concurrent sentence. That report reflected, among other things, the Committee's "inten[tion] that the mandatory sentence [under Section 924(c)] be served prior to the start of the sentence for the underlying or any other offense." S. Rep. No. 225, 98th Cong., 1st Sess. 313-314 (1983). The court concluded that, in order to give effect to that intent, the phrase "any other term of imprisonment" must be interpreted to exclude a state sen-

tence that the defendant is already serving. The court explained that "if a defendant is sentenced in state court first, there is no way in which a later-sentencing federal court can cause the mandatory five-year [Section] 924(c) sentence to be served before a state sentence that is already being served." Pet. App. 16a. The court also found its conclusion "entirely consistent" with Sentencing Guidelines § 5G1.3, which generally provides for a concurrent sentence when a defendant has previously been prosecuted in state court for the events that gave rise to his federal conviction. Pet. App. 16a-17a.

SUMMARY OF ARGUMENT

A. Section 924(c) provides that "[n]otwithstanding any other provision of law, the court shall not" run "the term of imprisonment imposed under this subsection * * * concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried." When construed according to its ordinary meaning, that language clearly prohibits a sentence that is to run concurrently with "any" sentence imposed on the defendant, including a sentence imposed for a state crime. For two reasons, that conclusion draws strong additional support from the context in which the prohibition on concurrent sentences appears.

First, the first sentence of Section 924(c) also uses the inclusive word "any" to refer to certain crimes, but then expressly qualifies that reference to limit it to federal offenses. Similarly, other provisions of Section 924 indicate that Congress knew well how to specify whether a particular provision relates to state

or federal matters. Second, by expressly prohibiting a concurrent sentence "[n]otwithstanding any other provision of law," Congress made plain its intent to displace the federal statute that ordinarily would authorize such a sentence, see 18 U.S.C. 3584(a), and the Sentencing Guidelines provisions that implement that statute, see Guidelines § 5G1.3.

There is no basis for overriding the text of Section 924(c) with a presumption that a federal sentencing statute would be concerned only with whether a federal sentence ran consecutively to another federal sentence, and would have no concern with whether the sentence ran consecutively to a state sentence that the defendant is already serving. Congress is well aware that the punishment of crimes is primarily the province of the States. The legislature, therefore, would have understood that the bulk of conduct covered by Section 924(c)—using or carrying a firearm in furtherance of violent and narcotics offenses—would also be covered by state criminal law, and that many defendants convicted under Section 924(c) would also be sentenced under state law for related offenses.

B. In light of the clarity of the statutory language, recourse to legislative history is unnecessary. In any event, the legislative history of Section 924(c) does not support the Tenth Circuit's conclusion. Section 924(c) was enacted in 1968. A narrow prohibition on concurrent sentences (forbidding only sentences that would be concurrent with any sentence imposed for the underlying felony) was first added to the statute in 1970. Although the 1970 amendment used the same "roundabout locution" to forbid a concurrent sentence that caused the Tenth Circuit to doubt whether Congress intended to require a consecutive sentence, the sponsor of that amendment and

the Senate Committee Report that accompanied it made clear that consecutivity was precisely what was intended.

Congress significantly broadened the original prohibition on concurrent sentences in 1984, when it expanded its focus from the sentence imposed for the underlying felony to its current focus on "any other" sentence that the defendant might receive, "including" that imposed for the underlying predicate crime. The Senate Committee Report that accompanied the 1984 amendment describes the change as precluding a sentence concurrent with a defendant's sentence "for any other crime"—a formulation that strongly confirms the unqualified language used in the statute itself.

In reaching a contrary conclusion, the Tenth Circuit relied on a different passage in the 1984 Senate Committee Report that reflected an expectation that sentences under Section 924(c) would be served before any other sentence, and it reasoned that such an "intention" cannot be given effect with respect to a state-law sentence that the defendant has already begun to serve. The same reasoning, however, would apply to any federal sentence that a defendant is already serving; the result would be that Section 924(c)'s prohibition would ordinarily apply only to sentences imposed for the predicate offenses, despite Congress's intent to forbid concurrency with "any other" sentence "*including*" that imposed for the predicate offense. More fundamentally, the Tenth Circuit erred in giving the force of law to a statement in the committee report that does not purport to explain any language in the statute.

C. Neither the rule of lenity nor the rule that statutes should be construed so as to avoid absurd results supports the conclusion reached by the Tenth Circuit. The rule of lenity comes into play only in cases of grievous ambiguity about a statute's meaning. It is inapplicable where, as here, the statutory language is clear. Moreover, there is nothing "absurd" in requiring lengthy terms of incarceration for defendants who use firearms in the commission of dangerous felonies and who are already subject to other prison sentences.

ARGUMENT

SECTION 924(c) FORBIDS THE IMPOSITION OF A SENTENCE THAT WILL RUN "CONCURRENTLY WITH ANY OTHER TERM OF IMPRISONMENT," IRRESPECTIVE OF WHETHER THE "OTHER TERM OF IMPRISONMENT" IS IMPOSED UNDER STATE OR FEDERAL LAW

Section 924(c) of Title 18 requires mandatory jail sentences for anyone who uses or carries a firearm during and in relation to a crime of violence or a drug trafficking crime; those mandatory sentences range from five years' to life imprisonment, depending on the type of firearm that the defendant used or carried and on the defendant's criminal history. The statute further provides that "[n]otwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried." 18 U.S.C. 924(c).

The question in this case is whether a district court has authority to order a sentence under Section 924(c) to run concurrently with a state term of imprisonment that the defendant is already serving. The Tenth Circuit concluded that the statutory prohibition of a concurrent sentence should not be read "literally," but must instead be interpreted to exclude a state prison sentence. For the reasons set forth below, that conclusion is inconsistent with both the plain language and history of Section 924(c), and it should accordingly be rejected.

A. Congress Used Expansive And Unqualified Language To Forbid A Sentence That Is Concurrent To "Any Other Term Of Imprisonment"

1. In determining the meaning of a statute, the inquiry must begin with the "ordinary meaning" of the language chosen by Congress. See, *e.g.*, *Moskal* v. *United States*, 498 U.S. 103, 108-109 (1990). The Court has repeatedly invoked that principle in its cases under Section 924(c). See *Smith* v. *United States*, 113 S. Ct. 2050, 2054 (1993); see also *Deal* v. *United States*, 113 S. Ct. 1993, 1997-1999 (1993); *Bailey* v. *United States*, 116 S. Ct. 501, 506 (1995).[3]

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[3] In *Bailey*, this Court held that the verb "uses" in Section 924(c) requires proof of "active employment of a firearm." 116 S. Ct. at 508. Respondents did not challenge their Section 924(c) convictions in the court of appeals, Pet. App. 9a, or at the petition stage in this Court. As we pointed out in the petition (Pet. 8 n.3), the sufficiency of the evidence to support those convictions is not affected by *Bailey*, *supra*, since there is no question that respondents "actively" used firearms during and in relation to the narcotics conspiracy. While the jury instructions did not incorporate the "active use" concept elucidated by *Bailey*, respondents did not object on that

The language of Section 924(c) is dispositive in this case, "for where, as here, the statutory language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917); accord *Metropolitan Stevedore Co.* v. *Rambo*, 115 S. Ct. 2144, 2147 (1995).

Section 924(c) expressly forbids the imposition of a sentence that is concurrent to "*any* other term of imprisonment." 18 U.S.C. 924(c)(1) (emphasis added). As this Court has frequently remarked, the ordinary understanding of the inclusive word "any" is "broad" (*NAACP* v. *New York*, 413 U.S. 345, 353 (1973)) and "expansive" (*Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 589 (1980)). The term "any" imports "no restriction" (*United States* v. *Turkette*, 452 U.S. 576, 580 (1981)) or "limit[ation]" (*International Union of Operating Engineers* v. *Flair Builders, Inc.*, 406 U.S. 487, 491 (1972); *Shea* v. *Vialpando*, 416 U.S. 251, 260 (1974)), and accordingly it ordinarily "leaves no doubt as to the Congressional intention to include all" members of the category identified by the enactment (*United States* v. *Rosenwasser*, 323 U.S. 360, 363 (1945)). By using that expansive term in Section 924(c), Congress manifested its intent to reach the totality of "other term[s] of imprisonment," including state terms of imprisonment, that a defendant convicted under Section 924(c) might be serving. Compare

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ground in district court and have not done so in any appellate court, including this one. As we noted in the petition, any error in the jury instructions in this case would not afford relief if raised for the first time on appeal.

United States v. *Alvarez-Sanchez*, 114 S. Ct. 1599, 1604 (1994) (statute that refers to an arrest made by "any law enforcement officer" includes "federal, state, or local" officers); *The Collector* v. *Hubbard*, 79 U.S. (12 Wall.) 1, 15 (1870) (statute forbidding filing suit "in any court" makes it "quite clear that it includes the State courts as well as the Federal courts," because "there is not a word in the [statute] tending to show that the words 'in any court' are not used in their ordinary sense").[4]

2. The Tenth Circuit's conclusion that the phrase "any other term of imprisonment" should be read as if it stated "any other *federal* term of imprison-

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[4] Respondent Hernandez-Diaz contended at the petition stage (Br. in Opp. 4-5) that *United States* v. *Alvarez-Sanchez*, 114 S. Ct. 1599 (1994), supports the Tenth Circuit's holding, because that case interpreted the phrase "arrest * * * [by] any law-enforcement officer" in 18 U.S.C. 3501(c) to refer only to arrests effected for violations of federal law. That contention is incorrect. *Alvarez-Sanchez* specifically held, relying on the plain meaning of the word "any," that the phrase "any * * * officer" includes "federal, state, or local" officers. 114 S. Ct. at 1604. The Court's conclusion that Section 3501(c) refers only to arrests for violations of federal law relied solely on another feature of that statute—*i.e.*, the statute's textual concern with "delay" in bringing an accused before a judge authorized to grant or deny bail for "offenses against the laws of the United States or of the District of Columbia." 18 U.S.C. 3501(c); *Alvarez-Sanchez*, 114 S. Ct. 1603-1604. The Court explained that such "delay" cannot occur until there is a "duty" to present a person to a federal magistrate, and that the "delay" covered by Section 3501(c) therefore requires an arrest for a federal crime. 114 S. Ct. at 1604. No similar contextual limitation on the phrase "any other term of imprisonment" justifies imposing a "federal crime" gloss on the last sentence of Section 924(c).

ment" is not supported by that court's view that Section 924(c) "is a federal statute, with presumed concern for the treatment of federal crimes." Pet. App. 12a. Section 924(c) unquestionably defines a federal crime and it prescribes a federal sentence for that crime. But it does not follow that it can also be "presumed" that Congress, in forbidding that federal sentence from running concurrently with "any other" sentence, meant to exclude state sentences from the broad sweep of that prohibition. As the Seventh Circuit noted in rejecting the Tenth Circuit's reasoning, there are simply no cases from this Court "announcing [as] a canon of construction" the "proposition that a federal statute might be presumed to deal with solely federal subjects." *United States* v. *Thomas*, 77 F.3d 989, 990-991 (1996).

Such a canon would be a particularly poor guide to Congress's intent in enacting federal criminal statutes. Congress "is predominantly a lawyers' body" that is familiar with "the commonplaces of our law." *Callanan* v. *United States*, 364 U.S. 587, 594 (1961). That includes the fact that "States possess primary authority for defining and enforcing the criminal law," *Brecht* v. *Abrahamson*, 113 S. Ct. 1710, 1720 (1993), and that, when federal law punishes the same conduct as is made criminal by state law, it is perfectly permissible for both sovereigns to prosecute and punish the offender cumulatively, see, *e.g.*, *Abbate* v. *United States*, 359 U.S. 187 (1959). Congress could not have failed to understand that the bulk of conduct covered by Section 924(c)—using or carrying a firearm in furtherance of violent and narcotics offenses—would also be covered by, and would be frequently prosecuted under, state criminal statutes. In broadly

prohibiting sentences under Section 924(c) from running concurrently with "any other" sentence that the defendant might be serving, Congress necessarily intended to preclude concurrency with any sentence previously imposed by State authorities for related conduct.

3. Apart from being foreclosed by Section 924(c)'s broad language prohibiting "any" concurrent sentence, the Tenth Circuit's analysis cannot be reconciled with the context in which that language appears. Two features of the statutory context show that Congress meant to forbid concurrent sentences with state as well as federal crimes.

First, the first sentence of Section 924(c) demonstrates that Congress was well aware of the breadth that the word "any" would have in the sentencing provision at issue here. The first sentence of Section 924(c), like the provision at issue in this case, also uses the word "any"; it does so to refer to the predicate narcotics and violent crimes that trigger application of Section 924(c). The first sentence, however, makes clear that the statute does not reach using or carrying a firearm during a state-law violation. It provides that a narcotics or violent crime qualifies as a predicate offense only if the defendant "may be prosecuted [for it] in a court of the United States"—*i.e.*, only if it is a federal crime. The fact that Congress, in another sentence of the same subsection, expressly limited the broad sweep of the phrase "any crime" to federal crimes is a telling indication that it did not intend to restrict the provision at issue here in the same manner. See, *e.g.*, *Brown* v. *Gardner*, 115 S. Ct. 552, 556 (1994). Indeed, as

the Seventh Circuit noted in *Thomas*, other subsections of Section 924 demonstrate that Congress is "perfectly capable * * * of specifying that a provision relates to state or federal matters." 77 F.3d at 991 (citing 18 U.S.C. 924(g)). Compare *United States* v. *Shabani*, 115 S. Ct. 382, 385 (1994) (when qualifying language is absent in one statute but is present in related statutes, "Congress' silence * * * speaks volumes"); *Patterson* v. *Shumate*, 504 U.S. 753, 758 (1992) (unqualified reference to "applicable * * * law" must be read as encompassing both federal and state law, rather than state law alone, since "Congress, when it desired to do so, knew how to restrict the scope of applicable law to 'state law' and did so with some frequency [in the same statute]").

Second, Section 924(c) forbids a concurrent sentence "[n]otwithstanding any other provision of law." A district court ordinarily has discretion to provide for a concurrent or consecutive sentence by virtue of a federal statute, see 18 U.S.C. 3584(a), and the Sentencing Guidelines provision that implements that statute, see Guidelines § 5G1.3; see also *id.* at Background. Congress was aware that district courts could use their statutory discretion under Section 3584(a) to make a new federal sentence concurrent with a state sentence that the defendant was already serving. See S. Rep. No. 225, 98th Cong., 1st Sess. 129 (1983). By forbidding any concurrent sentence "[n]otwithstanding any other provision of law," Section 924(c) makes "clear beyond peradventure" (*Cisneros* v. *Alpine Ridge Group*, 113 S. Ct. 1898, 1903 (1993)) Congress's intent to displace the source of legal authority that ordinarily would

authorize such a sentence—*i.e.*, Section 3584(a) and its implementing Guideline.[5]

4. Finally, the court of appeals' analysis cannot logically be confined to prisoners serving state sentences. The Tenth Circuit determined, without any support in the statutory language, that Congress's "stated intent" was that a Section 924(c) sentence must be served before any other sentence, and it assumed that such "intent" should inform the meaning that courts will give to Section 924(c)'s prohibition on a concurrent sentence. Pet. App. 16a. The court then reasoned that Section 924(c) sentences may be made concurrent with "a state sentence that is already being served," *ibid.*, because in those cases it is not possible to comply with Congress's purported intent that the Section 924(c) sentence be served first. Yet the same reasoning would also lead to the conclusion that a new Section 924(c) sentence may run concurrently with any *federal* sentence that the defendant is already serving, because under 18 U.S.C. 3585(a) no federal sentence may commence before

[5] Indeed, if the Tenth Circuit applied to Section 3584(a) the same interpretive principles that it crafted for Section 924(c), it would have been compelled to conclude that a district court has no authority to run a federal sentence concurrently with a state sentence. Section 3584(a) gives the district court authority to impose a federal sentence that will run concurrently to "an undischarged term of imprisonment," without specifying that such "term[s] of imprisonment" include state sentences. The Tenth Circuit did not explain, nor is it apparent, why it is reasonable to "presume[]" (Pet. App. 12a) that Section 924(c)'s prohibition of concurrent sentences does not embrace state sentences, but that Section 3584(a)'s equally unqualified authorization of concurrent sentences does embrace such state sentences.

the date it is imposed.[6] The logical result of the Tenth Circuit's analysis, therefore, is that Section 924(c) sentences can run consecutively to "any other" sentences only if those sentences are imposed at the same time when the defendant is sentenced for the Section 924(c) offense—which would typically limit the statute's consecutivity feature to the underlying narcotics or violent crime. Such a result cannot be reconciled with Section 924(c)'s prohibition of a sentence that is concurrent "with any other term of imprisonment *including* that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried." Compare *Federal Land*

[6] Section 3585, which governs when a federal sentence is deemed to "commence" and whether any credit should be awarded to a defendant for any other time spent in custody, see generally *United States* v. *Wilson*, 503 U.S. 329 (1992), is a limit on the district court's authority under 18 U.S.C. 3584 to provide for a sentence that is fully concurrent. It has long been the rule under Section 3585's predecessor statute that a federal sentence cannot commence before the date of imposition, and thus that a federal sentence can be made concurrent only with *the remainder* of any sentence that the defendant may already be serving. See, *e.g.*, *Shelvy* v. *Whitfield*, 718 F.2d 441, 444 (D.C. Cir. 1983) (per R.B. Ginsburg & Scalia, JJ.); *United States* v. *Flores*, 616 F.2d 840, 841 (5th Cir. 1980). The Bureau of Prisons, which is the agency charged with administering Section 3585, see *Reno* v. *Koray*, 115 S. Ct. 2021, 2026-2027 (1995) (noting that Bureau's views are entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984)), has taken the same view under Section 3585. See Federal Bureau of Prisons, *Sentence Computation Manual CCCA*, Program Statement 5880.28, at 1-13 (1992 & Supp. 1994) ("In no case can a federal sentence of imprisonment commence earlier than the date on which it was imposed").

Bank v. *Bismarck Lumber Co.*, 314 U.S. 95, 99-100 (1941).

B. The Legislative History Of Section 924(c) Provides No Support For A Construction Of The Statute That Would Limit Its Prohibition On Concurrent Sentences

Because the language of Section 924(c) unambiguously answers the question presented by this case, there is no need to consult the legislative history for further guidance as to the statute's meaning. See, *e.g.*, *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 254 (1992). In any event, however, to the extent that it sheds light on the question at all, the legislative history fails to support the interpretation of the statute adopted by the court below.

1. As originally enacted in 1968, Section 924(c) imposed mandatory sentences on anyone who "(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States" or "(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States." The statute had its genesis as a floor amendment, sponsored by Representative Poff, to H.R. 17735, 90th Cong., 2d Sess. (1968), then known as the State Firearms Control Assistance Act of 1968. 114 Cong. Rec. 22,231 (1968); see *Simpson* v. *United States*, 435 U.S. 6, 13-14 (1978). Although the Poff amendment would have prohibited the imposition of a concurrent sentence, and the amendment was initially passed by the House in that form, see 114 Cong. Rec. 22,229, 22,248, a conference committee deleted that prohibition altogether. See H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 31-32 (1968).[7]

[7] Representative Poff's amendment also would have prohibited probation or a suspended sentence; the conference com-

The conference committee's version of Section 924(c) was ultimately accepted by the House (114 Cong. Rec. 30,587 (1968)) and the Senate (*id.* at 30,183).[8]

Congress returned to Section 924(c) in 1970, when it amended the statute to "reimpos[e] the restriction that no sentence under that section could be served concurrently with any term imposed for the underlying felony." *Simpson* v. *United States*, 435 U.S. at 14 n.9. To achieve that result, Congress added the following clause to the end of Section 924(c): "nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony." 115 Cong. Rec. 34,838 (1969). Senator Mansfield, the sponsor of the amendment, noted that the statute as amended would require a sentence "in addition to the sentence for the crime itself—be it bank

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mittee made that provision applicable only to second and subsequent convictions. See H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess. 31-32 (1968).

[8] As enacted, the new statute provided as follows:

> (c) Whoever—
>
> (1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or
>
> (2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States, shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than five years nor more than 25 years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of such person or give him a probationary sentence.

Pub. L. No. 90-618, § 102, 82 Stat. 1224.

robbery, interstate car theft, or whatever." *Ibid.* Quoting from the Senate Judiciary Committee report that accompanied the legislation, Senator Mansfield also emphasized that a sentence under Section 924(c) "would be imposed as a consecutive sentence to that imposed for the commission of the specific crime." *Ibid.*

The Tenth Circuit believed that Congress may have meant to require something other than a consecutive sentence by using a "roundabout locution" (Pet. App. 12a) in Section 924(c). It found significance in Congress's choice to "negate[] the imposition of a concurrent sentence," rather than "to require consecutive sentences." Pet. App. 12a-13a. The history of that "locution," however, confirms what ordinary English usage makes clear: that Congress viewed a prohibition on a concurrent sentence as the equivalent of affirmatively requiring a consecutive one.

2. As part of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, § 1005(a), 98 Stat. 2138-2139, Congress again revised Section 924(c) in several respects. In particular, Congress substituted the phrase "crime of violence" for the term "felony" in order to include violent misdemeanors within the statute's ambit while excluding nonviolent felonies. See S. Rep. No. 225, 98th Cong., 2d Sess. 313 n.19 (1983).[9] Additionally, Congress

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[9] In 1986, as part of the Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104, 100 Stat. 457, Congress further amended Section 924(c)(1), *inter alia*, to add narcotics crimes (such as those committed by respondents) to the list of predicate offenses and to increase punishments for certain aggravated violations of Section 924(c) (such as the use or

deleted the requirement that the firearm be carried "unlawfully," and substituted the requirement that the firearm be used or carried "in relation to" a predicate offense. Congress also made clear that Section 924(c) applies even when the underlying offense provides its own enhancement provision for use of a dangerous weapon in the commission of the offense, and thus repudiated the results reached by this Court in *Busic* v. *United States*, 446 U.S. 398 (1980), and *Simpson* v. *United States*, *supra*. Finally, Congress expanded the focus of the prohibition on a concurrent sentence from the underlying predicate crime to "any other term of imprisonment *including*" the underlying predicate crime.[10]

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carrying of machineguns, rather than more ordinary firearms). See generally H.R. Rep. No. 495, 99th Cong., 2d Sess. 2 (1986). The Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6460, 102 Stat. 4373, further amended Section 924(c) by increasing the mandatory sentences authorized by the statute.

[10] After the 1984 amendment, Section 924(c) (Supp. II 1984) read as follows:

> (c) Whoever, during and in relation to any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

The Tenth Circuit believed that the 1984 amendment supported the exclusion of state sentences from the scope of Section 924(c)'s prohibition on concurrent sentences. It relied exclusively on the Senate Committee Report's statement concerning the order in which Section 924(c) sentences should be served. That reliance was error, because the statement on which the court relied does not purport to explain any language in Section 924(c). "Without a text that can, in light of [that] statement[], plausibly be interpreted as *prescribing*" the order on which Section 924(c) sentences are to be served, that statement at most reflects "unenacted * * * beliefs[] and desires" which "are not laws." *Puerto Rico Dep't of Consumer Affairs Dep't* v. *Isla Petroleum*, 485 U.S. 495, 501 (1988). As this Court recently noted, "Members of this Court have expressed different views regarding the role that legislative history should play in statutory interpretation," but the Court has never "given authoritative weight to a single passage of legislative history that is in no way anchored in the text of the statute." *Shannon* v. *United States*, 114 S. Ct. 2419, 2426 (1994).

Moreover, the portion of the 1984 Senate Committee Report that actually speaks to the meaning of the provision at issue here contradicts, rather that supports, the Tenth Circuit's conclusion. As noted above, the 1984 amendment simply broadened a prohibition that had already been in the statute for 14 years. In

explaining the effect of the expanded prohibition on concurrent sentences the Committee Report stated:

> The Committee has concluded that subsection 924(c) should be completely revised to ensure that all persons who commit Federal crimes of violence * * * receive a mandatory sentence, without the possibility of the sentence being made to run concurrently with that for the underlying offense *or for any other crime* and without the possibility of a probationary sentence or parole.

S. Rep. 225, *supra*, at 313 (emphasis added). The Senate Committee's understanding that the 1984 amendments to Section 924(c) would preclude a sentence concurrent with a defendant's sentence "for any other crime" strongly confirms the unqualified language used in the statute itself, and is more pertinent than the language from the same Report on which the Tenth Circuit relied.

Indeed, the Tenth Circuit's interpretation of the effect of the 1984 amendments overlooks a principal thrust of the 1984 changes—to repudiate in broad terms the results of *Busic* and *Simpson* and to ensure cumulative punishments under Section 924(c) and any other crime that the defendant committed at the same time. S. Rep. No. 225, *supra*, at 312-313. The 1984 amendments made clear that Section 924(c) requires a consecutive sentence even when the defendant has been prosecuted and punished, on the basis of the same events, for another federal crime that itself carries an enhanced punishment for use of the same firearm. It makes little sense to suppose that Congress intended to permit a more lenient result when the underlying offense has merely been the

subject of a state prosecution, since such a prosecution, having been undertaken by a different sovereign, vindicated no federal interest.

C. Neither The Rule Of Lenity Nor The Rule Requiring The Avoidance Of "Absurd" Results Requires The Result Reached By The Court Of Appeals

Respondents contended at the petition stage (Hernandez-Diaz Br. in Opp. 6-9; Gonzales Br. in Opp. 8) that the result reached by the Tenth Circuit is supported by the rule of lenity and by the principle "that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffith* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Neither argument helps respondents.

1. The rule of lenity "applies only when, after consulting traditional canons of statutory construction, [the Court is] left with an ambiguous statute." *United States* v. *Shabani*, 115 S. Ct. at 386; see also *Reno* v. *Koray*, 115 S. Ct. 2021, 2029 (1995). There is no ambiguity here, and thus no occasion for invoking that canon of construction. Respondents' view that Section 924(c) is ambiguous is based on the claim that "the strongest indication of Congress' intent" (Hernandez-Diaz Br. in Opp. 7-8) is found in the 1984 Senate Committee Report concerning the order in which Section 924(c) sentences should be served. As we have explained, however, Congress did not enact textual requirements in Section 924(c) regarding the sequence in which sentences under that section and other sentences shall be served; it required only that they not run concurrently. Legisla-

tive history regarding the Committee's intent cannot create "ambiguity" in clear statutory language.

2. Nor can the result produced by the plain language of Section 924(c) fairly be labeled "absurd" (Pet. App. 11a) solely because the court of appeals did not believe that Congress could have intended drastically to increase the "custodial price" (*id.* at 15a) of Section 924(c) offenses, or because of respondents' view that their sentences would be "unreasonably harsh and unjust." Hernandez-Diaz Br. in Opp. 8; see also Gonzales Br. in Opp. 8. Even if the court of appeals were correct in its calculations of the total number of years that respondents will be required to serve in prison, that type of "ungarnished policy view" has been previously rejected by this Court has a guide for interpreting Section 924(c), see *Deal* v. *United States*, 113 S. Ct. at 1998 & n.3, and neither respondents nor the Tenth Circuit have offered any sound reason why it should fare any better here. Indeed, it is hardly "difficult to fathom" that Congress "could rationally have decided that the use or carrying of a firearm during or in relation to a crime of violence [or drug trafficking crime] warranted a minimum term of imprisonment in addition to any other term of imprisonment imposed on the defendant." *United States* v. *Thomas*, 77 F.3d at 992.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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